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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOSEPH R., a Person Coming Under
the Juvenile Court Law.

B235998

(Los Angeles County
Super. Ct. No. GJ28798)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph R. appeals from the juvenile court's order adjudicating him a ward of the court and directing him into suitable placement after sustaining a petition pursuant to Welfare and Institutions Code section 602¹, alleging he had committed one count of petty theft. Joseph contends the juvenile court abused its discretion by declining to reinstate him on informal probation and erred in failing to exclude his admissions at the adjudication hearing. We affirm.

PROCEDURAL BACKGROUND

On February 15, 2011, the People filed a petition alleging then 13-year-old Joseph had committed two counts of petty theft (Pen. Code, § 484, subd. (a).) Represented by appointed counsel, Joseph denied the allegations.

On May 2, 2011, the juvenile court placed Joseph at home on informal probation for six months pursuant to section 654.2. At the time, Joseph was living with Anthony B., the boyfriend of Joseph's deceased mother. Anthony B. was neither Joseph's biological father nor his legal guardian. On July 1, 2011, the court terminated informal probation and issued a warrant for Joseph's arrest and detention in juvenile hall after he failed to appear, having run away from Anthony B.'s home a week earlier.

On August 10, 2011, Joseph appeared in court, and the bench warrant was recalled. After reviewing a report submitted by the probation department, the juvenile court declared Joseph a ward of the court, found that it was a matter of immediate and urgent necessity that he be removed from his home, that continuance in the home was contrary to his welfare, that reasonable efforts had been made to prevent or eliminate the need for removal and that his temporary placement and care were the responsibility of the probation department. (§ 636, subds. (a) & (d).)

¹ Statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

On August 24, 2011, the juvenile court ordered the probation department to investigate the homes of two individuals, Joseph's grandmother and a family friend, as possible placement alternatives and set the matter for adjudication.

On the morning of the September 14, 2011 adjudication hearing, Joseph filed a motion to be reinstated on informal probation, which the juvenile court heard and denied. Before the adjudication hearing commenced, the People announced they were unable to proceed on count 1, and the court dismissed that allegation of petty theft. After the People rested, the defense motion to dismiss for insufficient evidence was argued and denied. Joseph neither testified nor presented other evidence in his defense. Following closing argument, the court sustained the petition, finding the People had proved beyond a reasonable doubt that Joseph had committed petty theft as alleged in count 2.

At the disposition hearing, the juvenile court declared Joseph a ward of the court. Because Joseph had no parent or legal guardian to ensure his welfare, the court ordered him to be placed under the care of the probation department and detained pending suitable placement. The court acknowledged potential placement alternatives were being investigated, but stated it had insufficient information at that time about these individuals for Joseph to be placed with any of them. The court also ordered the probation department to continue assessing these individuals as alternative placements and to provide a progress report at the six-month review hearing.

FACTUAL BACKGROUND

At the adjudication hearing, Donna Shepard testified she worked for the Assistant Principal of a middle school. On the morning of May 10, 2010, Joseph was removed from class and brought into her office. Shepard had him wait in her outer office for his caretaker, Anthony B., to pick him up.

Shepard left her office briefly while Joseph was sitting in the outer office. When Shepard returned, she did not notice anything unusual. However, when Shepard arrived home that evening, she discovered her cell phone was missing from her purse, which had

been in an unlocked desk drawer in her office. Shepard's daughter dialed the missing cell phone's number and the person who answered said, "Is this Joseph?"

On May 12, 2010, Shepard asked Joseph if he had her cell phone. Joseph initially said he did not, but he later admitted that he did. After Shepard bought a new cell phone, keeping the previous phone number, she began receiving phone calls and text messages from people she did not know. One text message contained the name, "Joseph."

When subsequently questioned on May 12, 2010 by the Assistant Principal, Eric Gothold, Joseph admitted taking Shepard's cell phone from her purse, and using it for texting and making calls. Joseph said he hid the phone in his front yard, but that it had since disappeared. Gothold had Joseph write a one-page statement describing the theft.²

DISCUSSION

1. *The Refusal to Reinstate Joseph on Informal Probation Was Not an Abuse of Discretion*

The informal probation established by section 654.2 provides a juvenile court with the discretion to give an alleged delinquent minor an opportunity to demonstrate an ability to reform before any delinquency is adjudicated.³ (See *In re Armondo A.* (1992)

² Joseph's oral admissions to Shepard and Gothold and his statement was admitted into evidence over defense objection that they were involuntary.

³ Section 654.2 provides: "(a) If a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. If the probation officer recommends additional time to enable the minor to complete the program, the court at its discretion may order an extension. Fifteen days prior to the final conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall submit to the court a followup report of the minor's participation in the program. The minor and the minor's parents or guardian shall be ordered to appear at the conclusion of the six-month period and at the conclusion of each additional three-month period. If the minor successfully completes the program of supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the

3 Cal.App.4th 1185, 1188-1190.) “[T]he purpose of the section 654 informal supervision program is to avoid a true finding on criminal culpability which would result in a criminal record for the minor. If the informal supervision program is satisfactorily completed by the minor, the petition must be dismissed.” (*In re Adam R.* (1997) 57 Cal.App.4th 348, 352.) On the other hand, “[i]f the minor does not satisfactorily complete the program, there is no statutory provision for dismissal of the petition; rather the proceedings on the petition continue.” (*In re Adam D.* (1997) 56 Cal.App.4th 100, 103; § 654.2.) Because section 654.2 gives the juvenile court discretion to impose informal probation, implicit in the statute is the requirement that the court exercise discretion in determining whether a minor has successfully completed the terms of supervision.

The factors to be considered by the juvenile court in determining a minor’s initial and continued eligibility for section 654.2 informal probation are specified in California Rules of Court, rule 5.516(b). Those factors include: the seriousness of the minor’s misconduct and history of delinquency; the minor’s age and maturity; the existence of any problems at home or school; the willingness and capacity of the minor and parent or guardian to resolve any problems without official intervention; and the recommendation of the probation department.

Our review of the juvenile court’s order revoking informal probation is constrained; we will reverse only if we conclude there was an abuse of discretion. (See *In re Armondo A*, *supra*, 3 Cal.App.4th at pp. 1189-1190; *In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) “[A]n appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is

program of supervision, proceedings on the petition shall proceed no later than 12 months from the date the petition was filed. [¶] (b) If the minor is eligible for Section 654 supervision, and the probation officer believes the minor would benefit from a program of supervision pursuant to this section, the probation officer may, in referring the affidavit described in Section 653.5 to the prosecuting attorney, recommend informal supervision as provided in this section.”

substantial evidence to support them. [Citations.] In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law.” (*In re Carl N.* (2008) 160 Cal.App.4th 423, 432.)

We find no abuse of discretion in this case. The record shows at the time the juvenile court terminated informal probation and proceeded with the adjudication of the section 602 petition, Joseph’s informal probation had been unsuccessful. His probation officer recommended Joseph’s informal probation be terminated and he be adjudicated a ward of the court. The probation officer reported Joseph had no legal guardian. His mother had died three years earlier, and his care had been left to Anthony B., the biological father of Joseph’s two half-brothers. Anthony B. informed the probation officer that Joseph had some behavior problems at home, including staying out all night. Anthony B. did not respond when the probation officer attempted to contact him. Defense counsel reported in late July and early August, 2011, Anthony B. punched Joseph in the face repeatedly, slapped his head, grabbed him by the neck, smashed his head against the side of his house and the floor. When Joseph showed up at a Boys and Girls Club, sobbing and visibly injured, Anthony B.’s abuse was reported to the police and a child abuse investigation was initiated. The probation officer also explained that since being placed on informal probation, Joseph had received unsatisfactory grades and had exhibited behavior problems at school, among them, stealing from the school nurse and bullying classmates. Additionally, Joseph had failed to report to his probation officer as instructed and to provide proof of his completion of mandatory community service hours.

Joseph was left with no one who could assume responsibility for him. Anthony B. was not present at the adjudication hearing, and DCFS declined to intervene in the situation. While Joseph’s maternal grandmother was present at the adjudication hearing, she lived in a rented room and could not care for Joseph. She told the juvenile court she hoped to be able to move to a new residence that would accommodate her grandson.

We agree with Joseph that the petty theft offense itself is not serious, but our examination of the totality of the evidence convinces us the juvenile court's refusal to reinstate him on informal probation was consistent with the purpose of Juvenile Court Law, which is to consider the safety and protection of the public and the minor, the importance of redressing injuries to victims and the best interests of the minor. (§ 202, subds. (a) & (d).) For Joseph, the court's options were limited; he had no legal guardian and his de facto caretaker was potentially physically abusive. In addition, his behavior continued to demonstrate problems. The court advised Joseph to "straighten [himself] out" and to "keep [his] hands off of other people's stuff," and ordered him to have no contact with Anthony B. The court also ordered the probation department to continue its efforts to find alternative placement. We conclude the disposition order was justified as necessary to rehabilitate Joseph and to afford him adequate protection and care. Under the circumstances, the court did not abuse its discretion by concluding it would be more beneficial to Joseph to have more formal supervision or one of longer duration than that available under section 654.2.

2. Joseph's Admissions Were Properly Admitted Into Evidence

Joseph contends the juvenile court erred in failing to exclude his admission that he had taken Shepard's cell phone because it was coerced. Joseph cites *J.D.B. v. North Carolina* (2011) 564 U.S. __ [131 S.Ct. 2394, 180 L.Ed.2d 310] to argue that his youth should have been taken into account in determining whether his admissions were involuntary, resulting from prolonged coercion by Shepard and Gothold.

The Fourteenth Amendment to the federal Constitution and article I, section 15, of the state Constitution bar the prosecution from using a defendant's involuntary confession. [Citation.]” (*People v. Massie* (1998) 19 Cal.4th 550, 576; accord, *Jackson v. Denno* (1964) 378 U.S. 368, 376 [84 S.Ct. 1774, 12 L.Ed.2d 908].) When a defendant challenges his or her statements as involuntary, the prosecution bears the burden of proving voluntariness by a preponderance of the evidence. (*Lego v. Twomey* (1972) 404

U.S. 477, 489 [92 S.Ct. 619, 30 L.Ed.2d 618]; *People v. Markham* (1989) 49 Cal.3d 63, 71.)

“A statement is involuntary if it is ‘not “the product of a rational intellect and a free will.”’ [Citation.]” (*People v. Rundle* (2008) 43 Cal.4th 76, 114, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) “Voluntariness does not turn on any one fact, no matter how apparently significant, but rather on the ‘totality of [the] circumstances.’ [Citations.]” (*People v. Neal* (2003) 31 Cal.4th 63, 79.) Thus, “[t]he due process [voluntariness] test takes into consideration “the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” [Citations.]” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1093, disapproved on another ground in *People v. Rundle, supra*, 43 Cal.4th at p. 151.) “Relevant are ‘the crucial element of police coercion [citation]; the length of the interrogation [citation]; its location [citation]; its continuity’ as well as ‘the defendant's maturity [citation]; education [citation]; physical condition [citation]; and mental health.’ [Citation.]” (*People v. Williams* (1997) 16 Cal.4th 635, 660.) Other characteristics of the defendant to be considered are his or her age, sophistication, prior experience with the criminal justice system, and emotional state. (*In re Shawn D.* (1993) 20 Cal.App.4th 200, 209.)

An appellate court reviews independently a trial court’s determinations as to whether coercive activity was present and whether a defendant’s statements were voluntary. (*People v. Guerra, supra*, 37 Cal.4th at p. 1093.) A trial court’s findings concerning the circumstances surrounding the confession, including the characteristics of the accused and the details of the interrogation are generally reviewed for substantial evidence. (*Ibid.*)

Joseph’s challenge to the voluntariness of his admissions rests on his assertions that, faced with his initial denial of the theft, Shepard “did not stop pushing” until he admitted taking her cell phone; and Gothold questioned Joseph for 45 minutes, insisting he tell the truth, until Joseph admitted the theft.

On the state of the evidence, we are hard-pressed to conclude, as Joseph contends, that he was “brow-beaten” into making his admissions. The record shows Joseph was 13 years old at the time of the theft, and Shepard and Gothold, who were known to Joseph, each interviewed him alone at school. Shepard repeatedly asked Joseph if he took her cell phone. After initially denying it, Joseph admitted the theft. When Gothold questioned Joseph, it was in the context of a meeting to discuss Joseph’s return to school from a one-day suspension. When that discussion concluded, Gothold asked Joseph if he knew about the theft of Shepard’s cell phone. Gothold testified after talking with Joseph about the theft for about 45 minutes, Joseph admitted taking the cell phone. Gothold had Joseph write a statement describing the theft.

There is no evidence either Shepard or Gothold threatened or lied to Joseph, confined him for a long period of time, or otherwise caused Joseph’s will to be overborne during the interviews. (See e.g. *In re Roger G.* (1975) 53 Cal.App.3d 198, 203 [minor’s confession involuntary where police threatened him with certification to adult court if he did not talk and promised to help him secure parole if he did.].) Nor is there any evidence the two school officials deceived Joseph or promised him any benefit or leniency if he falsely admitted the theft. (See e.g. *In re Shawn D.*, *supra*, 20 Cal.App.4th at p. 216 [minor’s confession involuntary where police made continual promises of leniency in exchange for confessing].) In sum, while Shepard and Gothold asked Joseph repeatedly about the theft, there is nothing to suggest the questioning was coercive. The admissions were properly admitted into evidence.

DISPOSITION

The order under review is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.